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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,536	09/30/2003	Robert Lee Cline	PO-7925/MD-02-52	6084
157 7590 05/31/2007 BAYER MATERIAL SCIENCE LLC 100 BAYER ROAD PITTSBURGH, PA 15205			EXAMINER SAYALA, CHHAYA D	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 05/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/675,536	Applicant(s) CLINE ET AL.	
	Examiner C. SAYALA	Art Unit 1761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-5, 7-11, 13-17, 19-23, 25-29 and 31-35.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.



CHHAYA D. SAYALA
PRIMARY EXAMINER

Response to Arguments

Applicant's arguments filed 5/9/07 have been fully considered but they are not persuasive.

At page 11, applicant, in describing the Wynnk et al. reference states:

The Wynnyk et al reference discloses the controlled release fertilizer materials which comprise a particulate plant nutrient surrounded by a protective coating. The protective coating comprises the particulate filler, and preferably, a release control coating beneath the protective coating to provide the desired controlled release properties of the fertilizer materials. The protective coating and the release control coating may be the same or different, and polyurethane type protective coatings are preferred. The particulate material(s) may be added to a polyol (e.g. castor oil, oleo polyol, etc.) or mixture of polyols, which is then reacted with an isocyanate or mixture of isocyanates to produce a coating which is less susceptible to damage during the mechanical handling of the fertilizer.

This reference further discloses that the particulate material may be added to the isocyanate or to a mixture of polyol(s) and isocyanate(s), or in conjunction with other non-reactive materials which modify the release profile. Other such materials include wax, petroleum oil, bitumen, coal products, natural oils, pulp and paper products, etc, which are premixed with the polyol. (See page 2, paragraph 0020 of the Wynnyk et al reference).

At page 12, applicant states:

Applicants respectfully submit that one of ordinary skill in the art has no insight into the presently claimed invention upon reading the Wynnyk et al reference.

Applicant's claim 1 exemplifies applicant's claimed subject matter:

Claim 1 (Previously Presented) A process for producing polyurethane(urea) encapsulated, slow release fertilizer particles comprising:

- a) applying a polyisocyanate component to fertilizer particles to form isocyanate coated fertilizer particles,
- b) mixing an inert filler with said isocyanate coated fertilizer, wherein said

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inert, inorganic filler is Insoluble or substantially insoluble in water and contains at least 50% by weight of particles having a particle size of less than 100 microns,

c) adding an isocyanate-reactive component to the mixture of step b), wherein said isocyanate-reactive component is selected from the group consisting of polyether polyols having an equivalent weight of less than 200 and a functionality of 2 to 8 and compounds having a molecular weight of from 105 to 400 and an equivalent weight of from about 31 to less than about 100 and containing from 2 to 4 hydroxyl groups, and

d) allowing the reactive components to form filler containing polyurethane(urea) encapsulated fertilizer particles containing from about 1 to about 15 percent by weight of filled polyurethane(urea), said percent by weight based on the total weight of the encapsulated fertilizer, with the proviso that the weight ratio of polyurethane(urea) to filler is from about 80:20 to about 30:70.

Therefore, applicant's position that one skilled in the art has "no insight" into the presently claimed invention based upon the Wynnyk et al. reference, is in error.

Additionally, applicant points to the examples and states: (page 12)

In spite of the broad disclosure of this reference, it is readily apparent from the working examples therein that the particulate filler is always added to the polyol component and this is then applied simultaneously with the isocyanate component to the particulate plant nutrient (i.e. urea). Examples 1 and 2 of this reference are comparative examples which do not contain a particulate filler, and Examples 3-6 are representative of the invention described therein.

Based on the examples, applicant states at page 13:

Applicants submit that the present Invention does not contain an organic additive such as this C₃₀₊ alpha olefin wax required by the Wynnyk et al reference. It is readily apparent from the working examples of the present application that in the absence of such an organic additive, it is no longer possible to add or blend the particulate filler with the polyol component or with the isocyanate component and apply either of these blends or mixtures to the fertilizer particles.

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In response:

It has been well established that all of the disclosure must be considered not just the specific examples, *In re Uhlig*, 153 USPQ 460. The “non-preferred” as well as the “preferred” portion of a reference is pertinent for what it teaches to one skilled in the art. *In re Meinhardt*, 157 USPQ 270 (CCPA 1968). It follows therefore, that disclosure in any part of the patent, not just the claims, places the subject matter of the claims in the possession of the artisan having ordinary skill in the art and renders it old.

Also on pages 13-14, applicant states:

One of ordinary skill in the art, however, has no insight into this fact upon reading the Wynnyk et al reference. To the contrary, the skilled artisan would expect and in fact believe that such blends of the particulate filler and either the polyol or the isocyanate would be preferred. This is clearly not true. Applicants further submit that once it is apparent to the skilled artisan that it is not possible to blend the particulate filler with either the polyol component or with the isocyanate component and form a blend suitable for application to fertilizer particles, the skilled artisan would believe that the organic additive (e.g. the C30+ alpha olefin wax) is critical. However, this is clearly not so.

What the skilled artisan “expects” and “believes”, as stated by applicant, are conclusory statements that lend no weight to the argument for patentability, particularly because applicant has based such statements on only part of the reference disclosure--the examples.. In particular, the statement that “the skilled artisan would believe that the organic additive (e.g. the C30+ alpha olefin wax) is critical” is not only conclusory, but also based on only one part of the reference disclosure, which is, the examples, and such part analysis of a reference would not only be self-serving but also prohibited by the above case law.

In light of the above, applicant’s arguments traversing the Moore reference, also does not place the instant claims in issuance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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